

Appl. No. 10/714,334
Amendment to Office Action of 3.11.2004

Remarks:

In the Specification:

When the application was filed several sections of the patent application were inadvertently underlined. Replacement paragraphs for these sections without the underlining have been provided above. Please note that for these sections, the standard amendment notation has not been utilized as to avoid confusion concerning the intended meaning of the underlining. Rather, clean versions of the replacement paragraphs have been provided. Other than the removal of the underlining, no changes have been made to these sections.

Additionally, in the last paragraph beginning on page 18, the applicant inadvertently referred to the "pillow" as a "water toy". An amended version of the paragraph correcting this error has been provided.

In the Drawings:

In the office action, the Examiner indicated the drawings were informal. The applicant filed the application with formal drawings and believes they meet all patent office requirements. If the drawings fail to meet any particular requirement, the applicant respectfully requests the Examiner or a USPTO draftsman to provide details.

In the Claims:

Claim Rejections 35 USC 112

The Examiner rejected claims 4 and 14-17 as being indefinite. Claims 14-17 have been amended and in amended form are believed to have fully overcome the Examiner's rejections.

Claim 4 was rejected because the density value given in the claims did not reference a volumetric measure along with the stated weight measurement (pounds). While no volumetric measure is provided, it is the custom in the memory foam industry to refer to the foam in terms of a pound weight to indicate density. The volumetric measure of cubic feet is understood. The applicant has attached several pages from various websites that sell memory foam indicating this industry practice and custom. Accordingly, the phraseology used in claim 4 is not indefinite as it

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would be fully understood by someone of ordinary skill in the art. The applicant respectfully requests the Examiner's 35 USC 112 rejection of claim 4 be removed.

Claim Rejections under 35 USC 102

The Examiner rejected claims 1, 2 & 11-13 as being anticipated by Gibson under 35 USC 102. Particularly, the Examiner contends that the one end of the Gibson case can be considered "substantially longer" than the length of the core as is required in the applicant's claim 1 and its dependent claims 2-13. The Examiner further contends that the phrase "substantially longer" can be broadly interpreted.

The applicant disagrees with the Examiner's interpretation of the term at least insofar as it is applied in claim 1 to describe the length of the pillow cover relative to the length of the pad. The Examiner is directed to page 9, lines 25-29 of the specification wherein the applicant implicitly indicates that a cover is "substantially longer" than the pad when it has a length 20% greater than that of the pad. The applicant has amended claim 1 to recite the requirement that "the pillow covering length being at least 20% longer than the pad length".

For at least the foregoing reasons, claim 1 and its dependent claims 2-13 are not anticipated or rendered obvious in view of the relied upon prior art. Accordingly, allowance of claims 1-13 is respectfully requested.

The Examiner also rejected claims 14-16 as being anticipated by Ciske under 35 USC 102. No specifics were provided.

Claim 14 (as amended) describes a method of using a flat pillow and requires the pillow to be formed and folded in a manner not taught, suggested or motivated by Ciske or any of the other relied upon references. The folding method described in claim 14 is best understood with reference to Figures 10D and 10E and the associated text in the specification on page 12, lines 13-27, which illustrate and describe an exemplary folded pillow according to one embodiment of the invention.

To form a pillow in the manner described in claim 14, a user "first folds the pillow widthwise at one or more locations" wherein "the one or more locations" are "a relatively short distance from a first widthwise edge of the pillow to form a first folded portion". Referring to the illustrated embodiment of 10E for example, the equivalent widthwise folds are indicated by element number 175. Relative to the length of the pillow, the widthwise fold locations are only a

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short distance from one widthwise edge of the pillow. As shown in Figure 10E, the first folded portion of the illustrated pillow is the length of the pillow located from the one widthwise edge and the second (or farthest) widthwise fold from the one widthwise edge.

Next, a user generally evenly folds "a remaining length of the pillow over the first folded portion and on to itself at two or more locations thereby covering the first folded portion and forming a second folded portion". There are several key requirements to the folding of the second folded portion. First, the remaining length of the pillow (i.e. the length from the farthest widthwise fold of the first folded portion and the other widthwise edge of the pillow) must be folded generally evenly over onto itself. For example, if the remaining length is 40" and the remaining length of the pillow is evenly folded twice, the length between the folds in the second folded portion would be about 13.3" apart. Second, the second folded portion must cover the first folded portion. For example, as shown in Figure 10E, the first folded portion is covered by the longer lengths between the widthwise folds 180 of the second folded portion. Further, as shown in Figure 10D, the first folded portion comprising the length between the one widthwise end and the widthwise fold indicated by element 165 is covered by the longer lengths between the widthwise folds 170 of the second folded portion.

Ciske does not teach, motivate or suggest folding the pillow in the specific manner prescribed by claim 14. The closest example provided by Ciske is that of Ciske's Figure 3 (a applicant annotated copy is proved as Appendix B). Analysis and review of Figure 3 reveals, however, that the equivalent second portion 34 is not generally evenly folded. Further, the rolled portion 32, similar to the first folded portion, is not substantially covered or encapsulated by the equivalent second folded portion. Concerning Figure 3, the Ciske specification states;

The first embodiment is created by laying out cushion body 30 with hook fastener 20a&b facing upward. Cushion body 30 is rolled into a spiral 32 from one of the narrow ends for approximately half of its length. In this process, upper surface material 22 is engaged by hook fastener 20a&b so that rolled spiral 32 is secured. The remaining length of cushion body 30 is folded into thirds towards rolled spiral 32 to form a folded section 34 of the first embodiment FIG. 3.

As is plainly clear, nothing suggests or motivates folding the Ciske pillow in the manner required by the claim.

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For reference, the Examiner is also invited to review the O'Sullivan reference, which has been made of record. This reference shows and teaches folding or rolling one end of the pad (or pillow) in Figure 3 for example, but does not show, teach, suggest or motivate folding the remainder evenly in such a manner as to cover the rolled or folded portion.

For at least the foregoing reasons, claim 14 and its dependent claims 17, 21 and 22 are neither anticipated nor rendered obvious by the relied upon references. Accordingly, claim 14 and dependent claims are in a condition of allowance.

Claim Rejections under 35 USC 103

The Examiner rejected claims 3-6 and 18-20 as being obvious over Gibson under 35 USC 103. Claims 3-6 are dependent on independent claim 1 and accordingly, are allowable over the relied on prior art for at least the same reasons provided above for claim 1.

Claim 18 (as amended) recites a combination of a pillow comprised of a viscoelastic foam pad in combination with instructions relating to the use of the pillow that direct a user how to fold the pillow in to various configurations. One of the various configurations describes a formed pillow including "a first folded portion and a second folded portion". "(T)he first folded portion" comprises "a section of the pillow folded at one or more locations proximate a widthwise end of the pillow". "(T)he second folded portion" comprises "a remaining section of the pillow folded approximately evenly over on to itself at two or more widthwise locations, wherein the second folded portion substantially encapsulates the first folded portion". In other words, the instructions must include directions relating to forming the pillow pad into a formed pillow similar to the pillow formed using the methodology of claim 14. For similar reasons as discussed above in relation to claim 14, none of the relied upon references teach, suggest or motivate providing instructions to fold the pillow in the specific manner required by claim 18 and its dependent claims. Accordingly, claim 18 and dependent claims 19 and 23 are in a condition of allowance.

Conclusion:

The applicant believes the objections and the rejections of the office action have been overcome through amendment and remark. Accordingly, the application and all pending claims

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are in a condition of allowance. The Examiner is respectfully requested to contact the undersigned at 303.768.0644 if there are any other outstanding issues that would prevent the expeditious issuance of a Notice of Allowance in this case.

Dated this 11 day of June, 2004

Respectfully submitted,



Kurt P. Leyendecker, Reg. no. 42,799
9241 South Lark Sparrow Drive
Highlands Ranch, CO 80126
303.921.9536